UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

PAMELA FELDER PLAINTIFF

VS. CIVIL ACTION NO. 3:13CV392TSL-JCG

DR. LONNIE EDWARDS, IN HIS INDIVIDUAL CAPACITY, DR. JAYNE SARGENT, IN HER INDIVIDUAL CAPACITY, AND JACKSON PUBLIC SCHOOL DISTRICT DEFENDANTS

ORDER

This cause is before the court on the motion of defendant Jackson Public School District (JPSD) for summary judgment. As the basis for its motion, JPSD argues that plaintiff Pamela Felder cannot prevail on her FMLA interference claim because she has testified that she was unable to return to work on January 25, 2012; since she for her own personal reasons was unable to return to work on January 25, 2012, then she was not entitled to reinstatement pursuant to the FMLA; and, since she was not entitled to reinstatement, then JPSD did not deny her anything she was entitled to receive by not reinstating her; and therefore, she cannot show she suffered prejudice. Defendant's motion is not well founded. As this court clearly recognized in its opinion granting her motion for new trial, plaintiff's actionable FMLA interference claim is based on her assertion that she was prejudiced because JPSD eliminated her position and consequently non-renewed her employment contract for the succeeding school year because of her absences on what should have been FMLA-approved leave. In its opinion, the court stated the following:

> [P]laintiff's theory in support of her FMLA claim ... was that JPS wrongly denied her claim for FMLA leave in October 2011, as a result of which she was forced to use personal (and donated) leave; and then JPS, through Jayne Sargent, impermissibly used her absence from work as a reason to non-renew her contract for the succeeding school year. In her motion, plaintiff contends that the jury found that JPS violated her FMLA rights *by non-renewing her 2012-2013 contract*. This obviously would constitute prejudice as required for an FMLA interference claim; and this is exactly what plaintiff argued to the jury. She further argues that since the evidence showed without contradiction that she was unemployed for more than a year after the non-renewal of her contract, then she was entitled to back pay damages and the jury's verdict of "0" damages was inconsistent with its finding of liability and against the weight of the evidence. She asserts, therefore, that the court should enter judgment in her favor of $1 and grant a new trial on the issue of back pay.

Felder v. Jackson Public School Dist. et al., No. 3:13CV392TSL-JCG, slip op. at 8-9 (S.D. Miss. May 31, 2016) (emphasis in original). The court found that a new trial was warranted because:

> ... Felder argued to the jury that JPS violated her rights under the FMLA by denying her request for FMLA leave in October 2011; and she further argued that she suffered prejudice as a result of JPS's denial of FMLA leave in that she was selected for non-renewal of her employment contract because of her absences from work on what should have been FMLA-approved leave. However, while it is apparent the jury found that JPS interfered with plaintiff's attempted exercise of her FMLA rights by refusing to authorize FMLA leave to which she was entitled, the court cannot reasonably interpret from the jury's answers to the court's special interrogatories

> that it found she was non-renewed because of her request for FMLA leave. That is, the jury in this case, in contrast to Brown, did not purport to find that JPS violated Felder's FMLA rights *by non-renewing her 2012-2013 contract*. What the jury found – and all the jury found – was that JPS "denied, restrained, or interfered with [Felder's] right to leave under the FMLA, or with her attempt to exercise her right to leave under the FMLA." Since the court's special interrogatories erroneously permitted the jury to find JPS liable for interference with Felder's FMLA rights without finding that Felder had proven prejudice, the jury may have found that JPS violated her FMLA rights by denying her request for leave and rendered its verdict for plaintiff on that finding alone, without a further finding that she suffered prejudice.
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> Again, this is significant because a plaintiff cannot prevail on an interference claim under the FMLA without proving she was prejudiced by the violation. See Ragsdale, 535 U.S. at 89, 122 S. Ct. 1155. Thus, if the jury found that plaintiff did not prove prejudice and still rendered a verdict for her because of the court's incomplete special interrogatory, the jury's verdict cannot stand. However, if the jury found that Felder was non-renewed because of her attempted exercise of her FMLA rights, then, since the evidence did establish that she suffered a loss of income as a result of her non-renewal, the jury's verdict of $0 for back pay damages is against the weight of the evidence and cannot stand. Thus, if the jury found that plaintiff did not prove prejudice and still rendered a verdict for her because of the court's incomplete special interrogatory, the jury's verdict cannot stand. However, if the jury found that Felder was non-renewed because of her attempted exercise of her FMLA rights, then, since the evidence did establish that she suffered a loss of income as a result of her non-renewal, the jury's verdict of $0 for back pay damages is against the weight of the evidence and cannot stand.

Id. at 10-11 (emphasis in original). The potential prejudice, as found by the court, lies in JPSD's decision to non-renew Felder, not on any failure to reinstate her in January 2012. JPSD's motion does not address this scenario and hence does not even attempt to demonstrate that JPSD is entitled to judgment in its favor on what the court has found to be Felder's actionable FMLA claim. For that reason, the motion will be denied.

SO ORDERED this 7th day of July, 2016.

/s/ Tom S. Lee
UNITED STATES DISTRICT JUDGE